IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

TUESDAY, THE 12TH DECEMBER 2006 / 21ST AGRAHAYANA 1928

OP.No. 29176 of 2001(W)

PETITIONER:

C.O.OUSEPH, CHEKKIETH HOUSE,
KORATTY, KIZHAKKUMMURI VILLAGE,
NALUKETTU

BY ADV. SRI.P.RAMAKRISHNAN

RESPONDENTS:
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1. **PLANT MANAGER, CARBORANDUM**
   UNIVERSAL LIMITED,
   THRISSUR 680 308.

2. **LABOUR COURT, ERNAKULAM.**

BY GOVERNMENT PLEADER
SRI.ANTONY DOMINIC
SRI.A.M.SHAFFIQUE
SRI.E.K.NANDAKUMAR
SRI.A.K.JAYASANKAR NAMBIAR

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 12/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

S. SIRI JAGAN, J.

O.P. No. 29176 OF 2001 W

Dated this the 12th day of December, 2006

J U D G M E N T

The workman in I.D. No.3/94 before the Labour court, Ernakulam is the petitioner herein. He is challenging Ext.P1 award passed by the Labour court in that I.D., whereby the Labour court found that his dismissal was justifiable but directed management to give an amount of Rs.5,000/- on sympathetic consideration.

2. The petitioner was dismissed from service after conducting a domestic enquiry. The Labour court found that the enquiry was conducted validly and properly and the findings of the enquiry officer are also supported by the evidence adduced in the enquiry. The petitioner is challenging both the findings. On the question of validity of the enquiry, the petitioner would contend that the enquiry is vitiated for want of compliance with principles of natural justice on two grounds. The first is that enquiry officer refused to keep the enquiry pending, while the criminal prosecution on the same set of facts was going on despite request was made by the petitioner for the purpose. The second was that the petitioner was not given an opportunity to cross examine MW7 despite the petitioner's request for adjournment on the ground that his

Advocate could not be present on the date when MW7 was cross examined. The petitioner challenges the findings in the enquiry on the ground that on the same set of facts and on the same evidence, the petitioner was acquitted in the criminal case and, therefore, relying on the decision of the Supreme Court in ***G.M. Tank Vs. State of Gujarat and others***[2006 (5) SCC 446] the Labour court ought to have found that since the petitioner was acquitted in the criminal case on the same set of facts and same evidence he could not have been found guilty in the domestic enquiry.

3. Before dealing with the contentions of the petitioner on merits, I have to deal with a specific contention raised by the counsel for the 1st respondent on delay and laches on the part of the petitioner. The counsel for the 1st respondent would submit that misconduct was committed on 11.10.1991. The dispute was raised in 1994 and award was passed in 1998. But the petitioner has filed this original petition only on 5.9.2001. In the above circumstances, according to the counsel for the 1st respondent, this original petition should be dismissed on the ground of unexplained delay and laches alone. From Ext.P1 itself, it is clear that award was published in the gazette dated 12.9.1999. The original petition was filed on 5.9.2001. Although the petitioner tried to explain the delay by saying that he did not get the criminal court order and that is why he could not file the original petition in time, the petitioner has not chosen to give any explanation whatsoever in the

original petition for the long delay. Therefore, I am of opinion that the original petition is liable to be dismissed on the ground of unexplained delay and laches alone. However, since the counsel has argued on merits also, I shall deal with those arguments as well.

4. The first contention is that the enquiry officer refused to keep the enquiry pending till the criminal case was finally decided. Regarding this point, it is settled law that the object and purpose of criminal prosecution and domestic enquiry are distinct and separate and, therefore, there is nothing improper in conducting the enquiry while the criminal prosecution was pending. It all depends on facts and circumstances of the case, which has to be specifically pleaded and proved by the petitioner. I do not find any such pleadings and proof offered by the petitioner either before the enquiry officer or before the Labour court. Therefore, I do not find any merit in this contention. The second contention is that the petitioner was not given an opportunity to cross examine MW7 although a specific request was made for adjournment on the day when MW7 was examined on the ground that the Advocate of the petitioner was not available. In this connection, it must be noted that MW7 is a police officer, who has investigated the criminal case against the petitioner. The said witness was not a person under the control of the management. It may not be possible for the management to secure the presence of the said witness again to accommodate the petitioner. In fact from Ext.P1 award I find that the

MW7 insisted on being cross examined on that day itself. In the said circumstances, since the petitioner had known in advance that MW7 is going to be examined on that day he should have made alternate arrangement, if his counsel was not available on that date. In the particular circumstances of the case, I do not find anything wrong in the enquiry officer refusing adjournment for cross examination of MW7.

5. Regarding the contention on the sustainability and the finding by the enquiry officer as I have already mentioned the petitioner relies on G.M. Tank's case(Supra) particularly relies on paragraph 31 of the same which reads as follows:

> *"31. In our opinion, such facts and evidence in the departmental as well as criminal proceedings were the same without there being any iota of difference, the appellant should succeed. The distinction which is usually proved between the departmental and criminal proceedings on the basis of the approach and burden of proof would not be applicable in the instant case. Though the finding recorded in the domestic enquiry was found to be valid by the courts below, when there was an honourable acquittal of the employee during the pendency of the proceedings challenging the dismissal, the same requires to be taken note of and the decision in* ***Paul Anthony*** *case will apply. We, therefore, hold that the appeal filed by the appellant deserves to be allowed."*

From the above paragraph itself, it is abundantly clear that it is not a Universal Rule but it depends on the facts and circumstances of the case. In fact, there are very many other Supreme Court decisions to the contrary as well. Therefore, I am of opinion that this decision should be held to be applicable only to the facts of that case. Further, the

petitioner has not chosen to prove before me that his case is identical in nature by producing a copy of the criminal court judgment and comparing the evidence and findings in the criminal court with those in the domestic enquiry. As such, I am unable to accept the contention of the counsel for the petitioner on the basis of the above said decision.

6. On a perusal of the discussion of the evidence in the enquiry, by the Labour court, I am satisfied that there was sufficient evidence adduced in the enquiry to find the petitioner guilty of the misconduct charged against him and there is nothing perverse in the appreciation of evidence, which warrants interference by this court under Article 226 of the Constitution of India.

7. I further find that after finding the petitioner guilty of such serious misconduct the Labour court directed the management to give the petitioner an amount of Rs.5,000/- on sympathetic ground. As such, the petitioner has got more than what he really deserved. For the above reasons, I do not find any merit in this original petition and accordingly the same is dismissed.

(S. SIRI JAGAN, JUDGE)

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S. SIRI JAGAN , J.

OP No.29176/01W

J U D G M E N T

12th December, 2006